SINGLE BENCH

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.4310 OF 2005

PETITIONER
PLAINTIFF

Bahadur Singh, S/o. Jagmohan Singh Rajpoot, Aged about 54 years, Occupation - Police Constable, State of Chhattisgarh, Raigarh, Resident of village Chhoteatarmuda, Raigarh, Tahsil & District Raigarh (C.G.)

P.R. No. 44441/05 Presented by Shri A.N. Bhakta dated 31/8/05

VERSUS

RESPONDENTS

1. State of Chhattisgarh, Through Collector Raigarh (C.G.) (DEFENDANT)

2. Kelo Vihar Shaskiya Karmachari Grih Nirman Sahakari Sanstha Maryadit, Raigarh, Through its President, Kelo Vihar Shaskiya Karmachari Grih Nirman Sahakari Sanstha Maryadit, Raigarh (C.G.)

RECEIVED COPY 31.8.05 CLERK TO A. G. BILASPUR

30/8/05

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... wp 4310/05 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	14.9.2005 Shri A.N. Bhakta, counsel for the petitioner. Shri R.R. Sinha, P.L. for the State. The petitioner has preferred this writ petition being aggrieved by the order dated 25.7.2005 (Annexure P-1) passed by learned 4th Additional Civil Judge, Class-II, Raigarh whereby learned Civil Judge has allowed the application of respondent No.2 herein filed under Order 1 Rule 10 of the Code of Civil Procedure, 1908. The case of the petitioner is that the petitioner herein filed a civil suit against respondent No.1-State questioning the right of respondent No.1 to interfere with the possession & right of the petitioner in respect of the disputed land. The said suit was decreed in favour of the petitioner herein and now respondent No.1 has moved an application under Order 9 Rule 13 of the CPC for setting aside the decree. Counsel for the petitioner argued that the suit has been finally disposed of, ex-parte decree has been passed against respondent No.1 and therefore, there is no pending suit before the learned Civil Judge and as such, learned Civil Judge has committed material irregularity by allowing the application filed by respondent No.2 under Order 1 Rule 10 of the CPC. The argument advanced by learned counsel for the petitioner prima-facie appears to be correct and therefore, issuance of notice to	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

respondent No.2 herein is further going to delay the proceedings of civil suit, as such, notice is not being issued to respondent No.2. However, if respondent No.2 feels aggrieved by this order then he will be at liberty to move this Court for recall of this order.

It is true that an ex-parte decree has already been passed against respondent No.1 in which respondent No.2 was not the party and thereafter, respondent No.1 has moved an application for setting aside that ex-parte decree. The suit has already been disposed of and unless the ex-parte decree is set aside, the suit cannot be restored for the trial court and unless the suit is restored, the application of respondent No.2 cannot be allowed.

In the circumstances, the order impugned is prima-facie perverse and suffers from illegality & material irregularity and same is liable to be quashed. Accordingly, the order impugned dated 25.7.2005 (Annexure P-1) is hereby quashed. However, if the ex-parte decree is set aside by the trial Court in that case the trial Court will be within its right to decide the application filed by respondent No.2 herein on its own merit in accordance with law.

With the aforesaid, the petition stands disposed of.

Consequently, M.(W.)P. No 3509/05 and I.A. No.7823/05 & 7824/05 also stand disposed of.

Certified copy as per rules.

Sd/-
L.C. Bhadoo
Judge

SP/ES/2005 - 20,000

Roshani 16.9.05 13.11.06 27/2/13